

Markette & Chouinard, P.C.

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DUSTIN M. CHOUINARD

TRANSMITTAL MEMORANDUM

TO: Ravalli County Commissioners
215 S. 4th Street
Hamilton, MT 59840

May 22, 2008

RE: Real Property located on Nez Pierce Road
(Sec. 25, TIN, R22W, Ravalli County)

Copies of documents and/or papers listed below are enclosed:

- *Copy of a letter to Alex Beal dated May 22nd, 2008.*

Please take the following action:

- ☐ For your review and comment.
- ☐ Per your request.
- ☐ Call me upon receipt of this letter.
- ☐ Please review and sign.
- ☒ **For your records.**

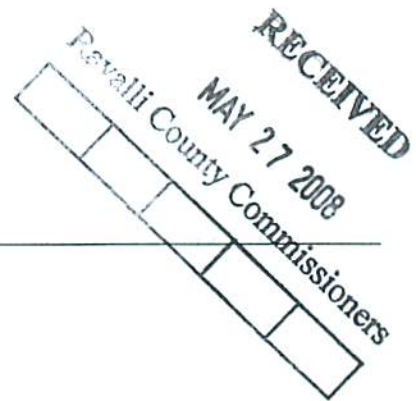
If you have any questions regarding the above, please call.

Sincerely,

MARKETTE & CHOUINARD, P.C.

Kerri Bailey

Kerri Bailey, Legal Secretary



Markette & Chouinard, P.C.
Attorneys at Law

COPY

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DUSTIN M. CHOUINARD

May 22nd, 2008

Ravalli County Attorney's Office
Alex Beal, Civil Deputy County Attorney
205 Bedford, Suite C
Hamilton, MT 59840

RE: Real Property located on Nez Pierce Road
(Sec. 25, T1N, R22W, Ravalli County)

Dear Alex:

I am in receipt of your May 20th, 2008 correspondence. I am disappointed that no response to our inquiries previously expressed is given. However, I will attempt to address the contents of your letter. First, as I understand the county's position, the issue at hand is whether fill was used to raise the elevation of the home site. Regardless of the maps, it is beyond dispute that, elevationally, the home site is not within the floodplain. The county has intimated it believes fill was used to achieve the elevation. My clients have indicated it was not. In demanding my clients prove fill was not used, the county is asking my clients to prove a negative.

I am not questioning or otherwise suggesting what the county should or should not investigate. As you know, my clients have been cooperative and responsive to the county's requests for information concerning not only current issues, but also through the septic approval process. They have been forthcoming with information and have incurred significant expense, both in reliance on the approval of the septic system and in response to Ms. Hendrix's inquiries. In turn, the county has now threatened to remove the residence through litigation, and is rewarding their cooperation in providing requested information by characterizing it as evidence against them. Under the circumstances, it is understandable why my clients seek to know the basis upon which the Floodplain Administrator has concluded fill has been inappropriately used. Moreover, they have a right to know.

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Your letter references “various correspondences” and “pictures from site visits” taken by county officials. I must again inquire, who, what, when, where and why? I have reviewed some items obtained by my clients from the Floodplain Administrator’s file. However, I have seen nothing that would support the county’s conclusion that fill has been used to raise the elevation of the home site. I will review the complete file with the understanding that all evidence available and relied upon by the county in forming its position regarding the above-referenced property and my clients is included therein. If more information exists, please let me know immediately. To effectively review the file, I would request the county duplicate the file, or allow us to do so. Reasonable fees and costs incurred will be promptly reimbursed. Please let me know the easiest way to obtain a complete and accurate copy of the file.

My comments regarding the newspaper should not leave you wondering who my audience is. I have no personal stake in this matter, but do have an obligation to pursue due process and equal protection for my clients, both of which are undermined when this matter is played out in the paper. It does not surprise me that the newspapers are aware of what is going on in the community. My comments are meant to illustrate the frustration I feel as an attorney who regularly advises clients to have faith in due process and our legal system, only to have a government official, whose decisions impact my clients, air conclusions against them to the newspaper, even before responding to our legitimate requests for supporting evidence.

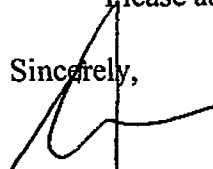
This is not a case of the Ravalli Republic or Bitterroot Star simply stumbling onto an issue. Ms. Hendrix is directly quoted. I appreciate that you and the commissioners have received calls regarding this case. I have as well. I also appreciate that neither you, your office, nor the commissioners have commented on this particular case. We, as attorneys, are limited by our professional obligations in what we may communicate to the news media. Likewise, the commissioners (or any other official) with decision making authority over a particular issue would not communicate conclusions to the media before hearing evidence and making a formal decision. The Floodplain Administrator has done just that here. Under the circumstances, I hope you can appreciate the damage Ms. Hendrix’s conduct has caused to the integrity of this process. As I indicated previously, given Ms. Hendrix’s conduct, it is clear she has prejudged this situation, and I seriously doubt that an adequate remedy exists to restore any sense of legitimacy to her opinions.

The bottom line is that if evidence supporting the county’s allegations exists, the county is yet to identify and explain the relevance of it. While your comment that the county is giving “one final opportunity” for my clients to show they “are not in violation of Montana law” confuses the burden of proof, to the extent it may invite honest dialogue regarding facts relevant to the case, we welcome it. That said, as I hope you are aware, my clients and I are willing to work towards resolution of this matter in good faith. In as much as the issues turn on whether or not fill was used to elevate the home site, I will review the contents of the Floodplain Administrator’s file to determine whether evidence exists to support this conclusion. If more explanation than the cold file is needed to understand how the evidence supports the conclusion

that fill was used to elevate the home site, please advise. We still require a response to the inquiries contained herein, and those previously made. Please let me know if there is anything else we can do at this point.

Please advise.

Sincerely,



Dustin M. Chouinard
Attorney at Law
DMC/ho

cc: clients
Ravalli County Commissioners
Ravalli County Planning Dept.